



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 28, 1996

Mr. Charles H. Weir
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR96-0268

Dear Mr. Weir:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 37317.

The City of San Antonio (the "city") received three requests for information relating to the city's 1994 emergency medical services ("EMS") units. The first request seeks a videotape made by the fire department to test these units, documents pertaining to the purchase of these units, material about the testing of these units, and documents that contain information about accidents involving these units. The second request also seeks the videotape and records pertaining to the purchase and performance of the 21 "type one ambulances" purchased by the city in November - December, 1993. The third request seeks (1) letters, memos or reports from any EMS personnel regarding problems with the braking ability of the units; (2) any documents derived from concerns expressed orally by EMS personnel; (3) any documents related to tests of the vehicles' braking ability, including written and videotaped documentation; (4) any reports on efforts to correct problems; and (5) all accident reports involving EMS units during calendar years 1994 and 1995. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. You have submitted samples of the documents that are responsive to the various requests.¹ We have considered the exceptions you claimed and have reviewed the sample documents.

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.-Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The city must meet both prongs of this test for information to be excepted under section 552.103(a).

Litigation cannot be regarded as "reasonably anticipated" unless there is more than a "mere chance" of it--unless, in other words, we have concrete evidence showing that the claim that litigation may ensue is more than mere conjecture. Open Records Decision Nos. 452 (1986), 331 (1982), 328 (1982). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision Nos. 452 (1986), 350 (1982). This office has concluded that litigation is reasonably anticipated when an attorney makes a written demand for disputed payments and promises further legal action if they are not forthcoming, and when a requestor hires an attorney who threatens to sue a governmental entity. Open Records Decision Nos. 555 (1990), 551 (1990). Additionally, in Open Records Decision No. 638 (1996), this office concluded that a notice of claim received by a governmental body that the governmental body represents to us complies with the Texas Tort Claims Act (the "act") was sufficient to establish reasonable anticipation of litigation for purposes of section 552.103.

The letter that you have submitted as Exhibit "VT" does not demand disputed payments nor threaten legal action if payments are not made. The letter also does not appear to be a notice of claim as contemplated by the act. The city has not offered any other evidence of a threat of suit. Therefore, we conclude that the city has not established reasonable anticipation of litigation for purposes of section 552.103(a) and may not withhold the requested information under that section.

You claim that the accident reports sought by the requestors are excepted from disclosure under section 552.101 of the Government Code. You state that the city maintains two types of accident reports, "Vehicle Accident Report or Loss Notices" and "Texas Peace Officer's Accident Reports." Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. The seventy-fourth legislature amended article 6701d, Vernon's Texas Civil Statutes, in House Bill 391 to provide that a law enforcement agency employing a peace officer who made an

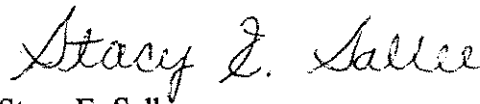
(Footnote continued)

authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

accident report is required to release a copy of the report on request to, among others, a person who provides the law enforcement agency with two or more of the following: (1) the date of the accident, (2) the name of any person involved in the accident, or (3) the specific location of the accident. Act of May 27, 1995, 74th Leg., R.S., ch. 894, §1, 1995 Tex. Sess. Law Serv. 4413 (Vernon). This act, however, applies only to "accident reports" required by article 6701d, V.T.C.S., or article 6701h, V.T.C.S.² Section 550.064 of the Transportation Code, formerly part of article 6701d, provides that the Texas Department of Transportation shall prepare and, upon request, supply accident report forms to suitable agencies or individuals. Act of May 1, 1995, 74th Leg., R.S., ch. 165, § 1, 1995 Tex. Sess. Law Serv. 1025, 1694-95 (Vernon) (to be codified at Transportation Code § 550.064). The statute sets out the information that must be included in those forms. *Id.* Section 601.004 of the Transportation Code, formerly part of article 6701h, similarly provides for accident report forms to be prepared by the Department of Public Safety. *Id.*, 1995 Tex. Sess. Law Serv. at 1705-06. As the city's "Vehicle Accident Report and Loss Notices" do not fall within the definition of "accident reports" that are addressed in House Bill 391, this law does not apply to the city's "Vehicle Accident Report and Loss Notices." Therefore, the city may not withhold those documents under section 552.101 of the Government Code in conjunction with the new legislation regarding accident reports. The city must, however, withhold the Texas Peace Officer's Accident Reports under section 552.101.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref.: ID# 37317

²Effective September 1, 1995, these statutes were repealed and replaced with the Transportation Code. Act of May 1, 1995, 74th Leg., R.S., ch. 165, § 24, 1995 Tex. Sess. Law Serv. 1025, 1870-71 (Vernon). The legislature did not intend a substantive change of the law but merely a recodification of existing law. *Id.*, § 25, 1995 Tex. Sess. Law Serv. at 1871. As the new law took effect on September 1, 1995, we will refer to the new law in this ruling.

Enclosures: Submitted documents

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